Forest Development Planning in the Queen Charlotte Islands Forest District Between June 15, 1995 and February 15, 1996

Special Investigation 950062
Complaint Investigation 950037

March 1999
FPB/SIR/03

103-06276/

Preamble

About this Report

This report deals with complex issues and because of this, is lengthier than most Board reports. Where possible, non-essential background information has been included in appendices.

This report concludes a special investigation that has taken more than two years to complete. Careful and extensive research has been necessary to explore the complex issues addressed by the first special investigation conducted by the Board.[1] The controversial nature of the issues has required extensive discussion with affected parties.

Chapter I of the report describes the origins and scope of the special investigation and explains how the investigation was carried out.

Chapter II begins by describing the unique circumstances that affected forest development planning in the Queen Charlotte Islands Forest District between June 15, 1995 (the date the Code came into effect) to February 15, 1996. It then describes and analyzes the planning delays that resulted from these circumstances, and the consequent changes to plans and cutblocks. These changes in turn created the need for frequent and numerous amendments to forest development plans. Chapter III discusses these amendments and the resulting effects on the referral and public review and comment processes.

Chapters IV and V include the Board's conclusions and recommendations resulting from the investigation.

Abbreviations Used in this Report

Act	This report makes reference to the Forest Act and Forest Practices Code of British Columbia Act. References to "the Act" refer to the Forest Practices Code of British Columbia Act.
Code	References to the "Code" refer to the Forest Practices Code of British Columbia Act and its associated regulations.
DFO	Department of Fisheries and Oceans
MELP	Ministry of Environment, Lands and Parks
PHSP	pre-harvest silviculture prescription
SBFEP	Small Business Forest Enterprise Program
TFL	tree farm licence
TSA	timber supply area

[1] The Chair of the Board, Keith Moore, declared a conflict of interest with this special investigation on March 12, 1997 after receiving the first preliminary investigation report. He did not participate in any deliberations or decisions regarding this special investigation or the preparation of this report after that date.

Summary

This report concludes the Forest Practices Board's special investigation of the state of forest development planning in the Queen Charlotte Islands Forest District between June 15, 1995 and February 15, 1996. The report also deals with a complaint from the Haida Forestry Branch, which led to the special investigation. The Haida's complaint asserts that contraventions of the Code resulted in a failure to provide adequate opportunity for the Council of the Haida Nation to be sufficiently consulted, or to have adequate time for appropriate review and comment.

Nature of the special investigation

In December 1995, the Board received a complaint from the Haida Forestry Branch about the state of operational planning in the Queen Charlotte Islands Forest District. The Board decided to investigate, and to also assess the state of operational planning in the district to provide a context for examining the assertions made in the complaint. The reason for this was to consider whether applications for cutting permits and amendments to development plans met the requirements of the *Forest Practices Code of British Columbia Act* (the Act) between June 15, 1995 and February 15, 1996.

The special investigation focused on the activities of the four major agreement holders in the Queen Charlotte Islands Forest District: MacMillan Bloedel, Western Forest Products, TimberWest, and Husby Forest Products. It also included the Small Business Forest Enterprise Program (SBFEP) operated by the Ministry of Forests.

Factors affecting development planning

The Board found that several factors combined to contribute to serious planning problems between June 15, 1995 and February 15, 1996. These factors included:

- the challenge of implementing the 1992 Coast Planning Guidelines
- implementation of Code requirements regarding cutblock size and configuration, leave areas and harvesting schedules
- uncertainty among industry and government staff about what was required to properly carry out assessment requirements in the guidelines and Code
- a shortage of approved cutting permits, leading to logging shutdowns and unemployment
- a shortage of staff and specialists in government agencies, licensees and the Haida Nation
- deferral of large areas from timber harvesting
- a large number of parties and licences in the approval process

Cumulatively, these factors produced planning delays and other consequences that forced the district manager to make difficult decisions in order to ensure availability of timber supplies. It was clear that none of the parties involved were comfortable with the

circumstances or the way in which planning was conducted between June 15, 1995 and February 15, 1996. The situation was viewed as a necessary result of the factors described above.

Planning delays and plan changes

One direct consequence of the serious planning problems in the district was a wide variation among licensees in the length of time between plan updates and in the amount of change between pre-Code plans and subsequent forest development plans. In addition, the positions and shapes of a substantial number of cutblocks approved in forest development plans for three licensees (MacMillan Bloedel, TimberWest and the Small Business Forest Enterprise Program) were modified to a moderate or maximum degree[2] in subsequent cutting permit submissions. This was primarily done to take into account information provided through resource assessments. Also, licensees applied for cutting permits for 19 cutblocks (2 by TimberWest, 3 by the SBFEP and 14 by MacMillan Bloedel) that were not identified on approved forest development plans, contrary to section 19 of the Act. Further, while the majority of cutting permit applications during the period of the special investigation were for cutblocks scheduled in years 1 and 2 of approved forest development plans, 22 of the 94 submissions were for years 3 to 5, significantly ahead of the harvesting schedule approved in the forest development plans. Nineteen of these 22 submissions were from MacMillan Bloedel, and only MacMillan Bloedel submitted cutting permit applications for cutblocks scheduled in years 4 and 5.

Conditional approvals and plan amendments

The Board found significant confusion around the processing of plan approvals. The district manager frequently approved forest development plans subject to conditions that had to be fulfilled (such as completion of assessments) before proposed harvesting or road activities were approved in permits. It became common practice for the district manager to amend conditionally approved forest development plans to incorporate changes to cutblocks and roads in the very same letters that approved the cutting permits and road permits. Development plan maps were not physically updated to reflect such changes, and no overall record of the approval status of all blocks was maintained for each forest development plan. These actions—conditional approval and plan amendment at the time of cutting permit approval—were considered by the district manager to be a necessary result of the factors prevailing at the time.

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[2] *Minimal, moderate* and *maximum*, in this context, are terms used by the Board as an investigative tool to describe the extent of change to cutblocks. They do not appear in planning or Code terminology. 'Minimal" means a change that clearly is minor in nature. "Moderate" means a change that did not clearly result from a refinement in planning. "Maximum" means a large change in block position, size or shape, or introduction of a new block.

Referrals

Instead of requiring licensees to refer amendments to the Department of Fisheries and Oceans, the Ministry of Environment, Lands and Parks and the Haida Nation, consistent with section 6 of the *Operational Planning Regulation*, the district manager authorized the continuation of referral processes that had existed before the Code came into effect. These processes left referral organizations in doubt about the time available for review and whether or not their concerns would be addressed.

With little notice of amendments, or time to review them, it was difficult for referral agencies, including the Haida Nation, to conduct thorough reviews of amendments to forest development plans between June 15, 1995 and February 15, 1996. This fact, together with an inadequate record-keeping system, created a potential risk that the district manager might not be able to fulfil his responsibilities under section 41 of the Act. These responsibilities include determining whether forest development plans and amendments adequately manage and conserve forest resources.

Frequent and numerous amendments also made it difficult for the Haida Nation to ensure that their interests were adequately protected during forest development planning. The amendments also jeopardized the ability of government to meet the Code objective, described in the Preamble to the Act, of "balancing forest values to meet the economic, social and cultural needs of peoples and communities, including First Nations."

Public review and comment

Review and comment opportunities for the general public were also reduced. Exercising the discretion provided under section 43 of the Act, the district manager decided not to require public review and comment for any of the eight forest development plan amendments approved between December 16, 1995 and February 15, 1996. Reasons for his decisions were not documented at the time, but the district manager advised the Board that consideration was given to several factors in concluding that the public was not materially affected by the amendments.

In the Board's view, reasons for these decisions ideally should have been documented, even though the district manager evidently intended to provide for improved forest management. In the Board's view two amendments that created major changes to cutblocks identified in approved forest development plans should have been made available for public review and comment.

Overall, continuous forest development plan amendments had both positive and negative effects. They ensured a continuity of timber supplies and employment and, according to the district manager, resulted in improved management of forest resources. At the same time, they significantly increased administrative workloads, reduced the effectiveness of referral agencies, diminished the ability of logging operators and referral agencies to plan efficiently, reduced public confidence in meaningful opportunities for public review and

comment and reduced the trust of the Haida Nation in the ability of the planning process to protect their interests.

Conclusions

The Board concluded that, both prior to and between June 15, 1995 and February 15, 1996, there was a breakdown in orderly forestry planning processes in the Queen Charlotte Islands Forest District. There was broad agreement among the parties involved that such a breakdown had occurred.

Although in many cases the planning events that occurred during the period of the special investigation were not consistent with the processes prescribed by the Code, the Board noted that the district manager and licensees were faced with extraordinary circumstances that called for unusual measures. Balancing the need to ensure continuity of timber supplies and community employment against the requirements of the Code for conservation of forest resources, during a difficult transition period with staff shortages, was an immensely difficult task that all parties worked hard to undertake. Planning delays, accelerated harvesting schedules and frequent amendments to forest development plans were undesirable but in many respects the only course available to achieve this balance.

Although the frequency and number of amendments had several negative effects, the Board concluded that the district manager made the best of a bad situation in his attempt to ensure the objectives of the Code were met while seeking practical solutions to a difficult economic situation. The amendment process probably produced better overall results than would have occurred by adhering to the original plans. However, it was clear to the Board as well that none of the parties involved—including government agencies, licensees and the Haida Nation—viewed the serious planning problems that occurred as desirable. It was a learning experience for all parties, the main lesson being the importance of anticipating regulatory changes and being prepared to conduct planning in a thorough and careful manner from the outset—a task that some licensees were better able than others to accomplish.

Recommendations

This report makes several recommendations concerning district procedures as well as recommendations to the Ministry of Forests as a whole. At the district level, the Board recommends that:

- Up-to-date forest development plans be made available for review by other agencies and the public.
- The district manager, licensees and referral organizations should agree on a process for review and approval of amendments. Referral organizations should identify the types of amendments they want to review and the information needed to review them, and licensees should provide this information directly to the referral organizations. The district manager should then make a notice under the

Code defining when referrals are required which would clarify the time-frame and responsibility of the licensees in considering referral input.

- District managers should routinely provide written reasons whenever exemptions are granted from public review and comment and should explain why persons would not be materially affected by plans or amendments.

At the ministry level, the Board recommends that:

- Government should provide policy direction to generally restrict approval of amendments to situations requiring response to unforeseeable circumstances.
- Government should examine options for streamlining the amendment process without compromising conservation of forest resources, or public opportunity for review and comment where an amendment materially changes the results or objectives of an operational plan.
- Government should provide policy direction interpretation of wording in section 43 of the Act (approval of minor changes in operational plans) and section 7 of the *Operational Planning Regulation* (referral of operational plans).
- Government should provide guidance on how to provide adequate opportunity, for Code purposes, for review and comment by First Nations if normal planning processes are disrupted by extenuating circumstances.
- Government should amend section 19 of the Act to prevent application for cutting permits for cutblocks before the cutblocks are approved in a forest development plan.

Finally, there is a need for public clarification of the current state of forest development planning in the district. Therefore, the Board recommends that the Ministry of Forests and Ministry of Environment, Lands and Parks publicly clarify the current state of forest development planning in the Queen Charlotte Islands Forest District.

TABLE OF CONTENTS

I. NATURE OF THE INVESTIGATION 2

A. The decision to conduct a special investigation 2
B. How the investigation was conducted 3

II. FOREST DEVELOPMENT PLANS IN THE QCI FOREST DISTRICT 4

A. Factors Affecting Development Planning 4
B. Delays in submission and approval of forest development plans 6
i. Impact of policy and legislative requirements 6
ii. Delays in submission and approval of forest development plans 8
iii. Conditional approval of plans 10
C. Changes to plans and cutblocks 11
i. Changes in updated forest development plans 11
ii. Changes to cutblocks in approved plans 12

III. AMENDMENTS TO FOREST DEVELOPMENT PLANS 17

A. Amendments to conditionally approved plans 17
B. The referral process 18
C. Referrals to the Haida Nation 21
D. Public review and comment 23
i. Exemptions for minor amendments 24
ii. Alternative avenues for public review and comment 26
E. Effects of the amendment process 28

IV. CONCLUSIONS 29

V. RECOMMENDATIONS 31

A. Forest development plans 32
B. Amendments to forest development plans 32
C. Consultation with the Haida Nation 35
D. Cutting permit submission and approval 35
E. Status of operational planning in the Queen Charlotte Islands Forest District 36

VI. APPENDICES 37

Appendix 1. — Overview of Forestry Planning Processes 37
Appendix 2. — Changes between Grandparented Plans and Subsequent Forest Development Plans 43
Appendix 3. — Changes to Cutblocks Submitted for Cutting Permit Approval 46
Appendix 4. — Interpreting Section 19 of the Act 47
Appendix 5. — Legislative Requirements for Public Review and Comment 48

I. Nature of the Investigation

A. The decision to conduct a special investigation

In December 1995, the Board received a complaint from the chair of the Haida Forestry Branch, which had been established by the Council of the Haida Nation to deal on its behalf with forestry issues on Haida Gwaii (the Haida name for the Queen Charlotte Islands). The complaint stated that MacMillan Bloedel Ltd. and the district manager of the Queen Charlotte Islands Forest District had failed to comply with Parts 3 to 5 of the *Forest Practices Code of British Columbia Act* (the Act) and its regulations (known together as the Code). The failures related to forest development plans and cutting permit approvals issued in Block 6 of Tree Farm Licence 39, which is held by MacMillan Bloedel Ltd.

The complaint further stated:

- that it had become commonplace for MacMillan Bloedel to submit, and the district manager to approve, by amendment to the company's forest development plan, cutting permits and road permits that had not been identified in that plan, in contravention of Code requirements;
- that the amendment of forest development plans in this manner deprived the public and regulatory agencies of an adequate opportunity for review and comment, as required by the Code; and
- that lack of adequate advance planning by the company had resulted in timber shortages, creating a crisis mentality in the Ministry of Forests and undermining the planning process prescribed for forest development plans under the Code.

To provide a context for examining the assertions made in this complaint, the Board decided in February 1996 to initiate a special investigation of forest development plans in the Queen Charlotte Islands Forest District.

The purpose of the special investigation was to examine whether the process for review and approval of cutblocks, beginning at the highest level with the submission of forest development plans and concluding with cutting permit approval, met the requirements of the Forest Practices Code. The investigation focused on the period between June 15, 1995 and February 15, 1996. The time period chosen began with the coming into force of the Code and ended at the approximate time the Board decided to initiate the special investigation. To enable this issue to be thoroughly examined, the Board focused primarily on four issues during its special investigation:

1. submission of forest development plans, amendments and cutting permit applications by licensees, and their approval by the district manager
2. the pattern and frequency of submissions and approvals of cutblocks that were either not identified in an approved forest development plan, or were moved ahead of the schedule described in the plan

3. the opportunity for review and comment on proposed amendments
4. effects of the amendment process on organizations that rely on forest development plans

This report represents the conclusion of both the Board's special investigation into forest development planning in the Queen Charlotte Islands Forest District, and the Board's investigation of the original complaint from the Haida Forestry Branch.

B. How the investigation was conducted

The Board obtained the information needed to complete the investigation through a variety of means:

- interviews with representatives of the Haida Forestry Branch
- interviews with staff at the Queen Charlotte Islands Forest District Office
- an extensive file search at the Queen Charlotte Islands Forest District Office
- a presentation and written submission to Board staff by MacMillan Bloedel
- interviews with other major licensees and representatives of the Ministry of Environment, Lands and Parks (MELP) and the Department of Fisheries and Oceans (DFO)
- submissions from, and interviews with, members of the public who responded to an advertisement announcing the special investigation
- a report by Sterling Wood Group, commissioned by the Board, comparing current development plans with previous development plans in the district

Three people have held the post of district manager from the time the investigation began to date. References in the report to the district manager refer to the person in the position during the time period covered by the special investigation.

Due to the complexity of the issues, the special investigation has lasted more than two years. As a result, some parties have questioned the relevance of the Board's findings and conclusions. However, frequent amendments to forest development plans remain a concern in the Queen Charlotte Islands Forest District to the present day. This speaks to the continuing importance of understanding the origins and depth of the problem.

Since the period covered by this investigation, the government has made several changes to the Act and regulations that relate to matters addressed in this report. The investigation findings and conclusions reflect the legislative requirements in place between June 15, 1995 and February 15, 1996—the period covered by the special investigation. However, the Board's recommendations are being made in the context of the new Code requirements. Care has been taken in the preparation of this report to cross-reference legislative requirements during the period covered by the investigation with those that exist today.

II. Forest Development Plans in the QCI Forest District

This section of the report describes the severe impact of a combination of factors on forest development planning during the period immediately preceding and following the implementation of the Code. These factors are described in Section A. Section B describes the delays that occurred in the updating and approval of forest development plans as a result of some of these factors. These factors also had an impact on the amount of change that occurred when forest development plans were updated. These changes are described in Section C.

Appendix 1 provides a general overview of forestry planning processes in BC. The overview describes:

- types of forestry tenures
- forestry planning sequences
- legislative requirements for preparation of forest development plans
- the purpose and content of forest development plans
- requirements regarding annual submission of forest development plans
- amendments to forest development plans
- review and comment by referral organizations and the public

A. Factors Affecting Development Planning

In order to understand the state of planning on the Queen Charlotte Islands during the period before and shortly after the Code came into effect, it is important to appreciate the variety of factors that had an impact on planning during this time. These factors included:

1. **Implementation of the Coast Planning Guidelines** – Introduced in 1992 to promote sustainable development, the guidelines ended progressive clearcuts by placing a 40-hectare maximum size on cutblocks. The guidelines also called for detailed assessments and mapping of a wide range of resource values.
2. **Code implementation** – Changing requirements regarding block size and configuration, leave areas and harvesting schedules meant that licensees had to not only adjust their planning practices, but also re-engineer many blocks for which preliminary planning had already been undertaken.
3. **Uncertainty in the industry and among government staff about what was required to properly carry out the pre-Code and Code assessment requirements** – In some cases there was disagreement between ministry staff and licensees about what should reasonably be required, and the resulting tension continued after the Code came into effect.

4. **Shortage of approved cutting permits** – Planning complexities led to a severe shortage in approved cutting permits in early 1995. This resulted in layoffs of logging crews and placed pressure on the government agencies and the licensees to get cutting permits approved promptly.
5. **Shortage of staff and specialists** – At the Ministry of Forests district office, a high turnover in staff meant there were constantly relatively new employees with little district experience. The Ministry of Environment, Lands and Parks (MELP) and Department of Fisheries and Oceans (DFO) also had very limited staff for review of forest development plans and amendments. Ministry staff and some licensees told the Board that they experienced difficulty recruiting specialists at a time when demand throughout the province exceeded availability. The Haida Nation was also short of technical specialists. The isolation of the islands contributed to difficulties in recruiting both specialists and staff.
6. **Large-scale deferrals of areas from harvesting** – Fourteen areas deferred from harvesting represented about 50 percent of the TSA land base and 25 percent of the TFL land base in the forest district.
7. **Number of parties and licences** – During the term of the special investigation, four major licensees and the Small Business Forest Enterprise Program (SBFEP) produced 11 forest development plans which were referred to two resource agencies and three Haida groups (Council of the Haida Nation, Old Masset Village Council, and Skidegate Band Council). This large number of players automatically complicated forest development plan completion and approval.

Cumulatively, these factors produced planning gridlock and a serious and imminent threat of expanded logging shutdowns and unemployment. This economic situation placed considerable pressure on all parties to take unusual steps to expedite cutting permit approvals. These steps included moving cutblocks ahead of schedule in forest development plans, and conditional approval of some cutblocks that did not meet all Code planning requirements, requiring forest development plan amendments before cutting permits were issued.

The district manager and licensees recognized that planning conducted in this manner was undesirable but, in their view, it was a necessary consequence of the extraordinary circumstances prevailing at the time.

In May 1995, the regional manager of the Vancouver Forest Region initiated a review of the problems faced by the district office. The review noted the need to get annual forest development plan submissions back on track and suggested establishing a schedule of development plan meetings involving the public and referral agencies. The region proposed that the district manager refuse to accept cutting permit applications for blocks not approved on a development plan, and that licensees be urged to submit cutting permits for several blocks instead of single blocks. The review also identified the need for better communication between district staff, licensees and referral agencies about planning requirements, and for actions to increase district staff complements and skill levels.

In July 1995, the regional manager of the Vancouver Forest Region and the regional director of the MELP, Skeena Region, wrote to all licensees, stating that "development planning processes in the district are, with some minor exceptions, a major concern. It is totally unacceptable for both industry and the resource agencies to be operating in a process of continual amendments to development plans dating back to 1992 and 1993. This deficiency must be addressed quickly and decisively." In December 1995 and January 1996, the district manager organized meetings to discuss the situation and look for solutions. These meetings included licensees, referral agencies and representatives of the Haida Nation.

All parties were aware that there were serious problems in forest development planning during the eight-month period under investigation—June 15, 1995 to February 15, 1996—and took steps to attempt to improve the situation.

Finding 1.
The introduction of comprehensive planning requirements for environmental protection and recognition of non-timber values before the Code came into effect contributed significantly to planning delays and timber supply shortages in the Queen Charlotte Islands Forest District. All parties agreed that there were serious problems with forest development planning processes. These problems were recognized at an early stage, and meetings involving all parties were held to seek solutions.

B. Delays in submission and approval of forest development plans

i. Impact of policy and legislative requirements

Some of the factors described above resulted in significant delays in the submission and approval of several forest development plans between June 15, 1995 and February 15, 1996.

During the periods immediately preceding and following the implementation of the Code on June 15, 1995, uncertainty about the interpretation of new requirements imposed by the Code, and a shortage of skilled staff to implement the requirements, were pervasive throughout the province.

Before the Code came into effect, licensees and government staff in the forest district were given preliminary training on how to meet the new requirements, although one licensee noted that much was left in doubt. Section 17 of the Act gave licensees the responsibility for carrying out assessments of non-timber resource values, site and soil conditions, terrain characteristics and forest health, and for collecting and analyzing data required by the regulations. While the forest industry had been made aware of these and

other Code requirements well before the Code was implemented, uncertainty and disagreement about the precise nature of the requirements continued for many months. In May 1995, the district manager sent a letter to licensees clarifying the type and amount of information needed in assessments. However, uncertainty existed about whether or not, and to what degree, the requirements for assessments applied to cutblocks already approved in grandparented plans[3] and coming up for cutting permit approval, and to forest development plans submitted before, but approved after, the Code came into effect.

Finally, a practical challenge to meeting Code requirements was presented by the need for technical expertise in conducting the assessments. Both licensees and the Ministry of Forests informed the Board that they had experienced difficulty recruiting the specialists required to do the assessments for the new generation of development plans, at a time when the demand for such specialists across the province exceeded their availability. The isolation of the Queen Charlotte Islands made this task particularly difficult.

The district manager took the position that plans prepared and submitted before the Code came into effect had to meet Code requirements if they were approved after the Code came into effect. However, some licensees believed that their responsibility was only to meet the legislative requirements in effect at the time a plan was prepared. They complained of an ever-changing playing field. They wanted to know precisely what content requirements were needed for forest development plans to be approved. They expected plans that had been submitted before June 15, 1995 to be approved if they met pre-Code requirements.

Just as licensees complained about a lack of precise direction from district staff, district staff experienced frustration obtaining guidance from the province on implementation of these Code requirements. Staff were told to conduct business according to the spirit and intent of the Code, but were not always clear what that meant.

Government staff sometimes requested more information than licensees believed they had to submit, and licensees sometimes provided less information than was asked for. As a result, some initial forest development plans submitted for approval in the months before and after the Code came into effect did not include all of the assessments required by the Ministry of Forests. In some cases, the district manager delayed approval while awaiting additional assessments from the licensee. Then, because of the pressure for approval, even if all the required assessments were not completed, the district manager approved the forest development plan with conditions.

In other cases there were significant delays in the submission and approval of forest development plans between June 15, 1995 and February 15, 1996. Submissions were delayed while the licensees and the Ministry of Forests negotiated what was required in the plans.

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[3] Grandparented plans refers to previously approved plans that were "grandparented" to be considered as forest development plans when the Code took effect on June 15, 1995.

The situation was aggravated by the fact that when the Code came into effect, some forest development plans had not been updated for several years. As a result, some blocks had to be re-engineered to meet Code requirements. This resulted in further delays in plan submissions and approvals.

Finding 2.
Lack of clarity and disagreement between government and licensees about the information required in forest development plans submitted in the months before and after Code implementation, together with licensee and government staffing constraints and a shortage of specialists, contributed to significant delays in the submission and approval of some forest development plans.

ii. Delays in submission and approval of forest development plans

When the Code came into effect on June 15, 1995, existing five-year development plans were grandparented as forest development plans for Code purposes. The special investigation found that five of 12 grandparented plans in the district had not been updated since 1992 or 1993, even though all licensees except MacMillan Bloedel were required by their licence agreements to update their plans annually. (MacMillan Bloedel had made an arrangement with the Ministry of Forests for biennial updating). Of these 12 plans, three forest development plans with licence requirements for annual updating (Husby FL A16871, Western Forest Products TFL 24 and TimberWest FL A16870) had not been updated since 1992 or 1993. Two plans with requirements for biennial updating (MacMillan Bloedel Alliford and McClinton divisions) had not been updated for three years. The district office was unable to provide records of the updating of SBFEP forest development plans. However, the fact that the 1993-97 plan was grandparented and no new SBFEP forest development plan was approved during the eight months of the special investigation indicates lengthy delays. Table A in Appendix 2 provides further detail regarding plan delays during this period.

Finding 3.
Several forest development plans had not been updated for two to three years prior to June 15, 1995, contrary to licence requirements.

Table 1 illustrates the delays that occurred in the submission and approval of forest development plans prepared by the district's largest licensee, MacMillan Bloedel, during the period preceding and following the implementation of the Code. Assuming a four-month period for review and approval of plans under normal circumstances, forest development plans should be submitted for approval six to eight months after approval of

the previous plan in a cycle of annual updates, or 18 to 20 months after approval in the two-year cycle the district permitted for MacMillan Bloedel. Table 1 shows that the time periods for submission and approval of plans were significantly delayed before and after the Code came into effect.

Table 1. Timelines for MacMillan Bloedel's 1995-1999 Forest Development Plans

Grandparented FYDP[4]	FYDP Approved	Delay Months	FDP[5] Submitted	Approval Months[6]	New Plan Approved
Ferguson Bay 1992-1996	Feb 93	19	Sept 94	12	Sept 95
Skidegate 1992-1996	Mar 93	15	June 94	15	Sept 95
McClinton Bay 1992-1996	Dec 92	37	Jan 95	8	Sept 95
Alliford Bay 1991-1995	Jan 92	38	Mar 95	7	Oct 95
Dinan Bay 1992-1996	May 93	13	June 94	4	Oct 94
Louise Island 1992-1996	Jul 92	26	Sept 94	5	Feb 95

Source: MacMillan Bloedel Ltd.

Table 2 provides similar information for other major licensees in the district. The SBFEP forest development plan is not included in Table 2, because it was not formally approved. Instead, as required by the Act, it was "put into effect." The district manager explained that this was done through the issuance of timber sales.[7]

[4] FYDP - Five-Year Development Plan (Pre-Code)

[5] FDP - Forest Development Plan (Code)

[6] Number of months between submission and approval of new plan.

[7] No formal submission or approval of SBFEPs was required before the Code; the language used by the Act is "give effect to" rather than "approve" (section 40).

Table 2. Timelines for Other Licensees' 1995-1999 Forest Development Plans

Grandparented FYDP[8]	FYDP Approved	Delay Months	FDP[9] Submitted	Approval Months[10]	New Plan Approved
Husby A16869 1994-1998	Mar 95	2	May 95	6	Nov 95
Husby A16872 1994-1998	Apr 95	0	Apr 95	7	Nov 95
Husby A16871	No Record[11]	N/A	Dec 94	12	Jan 96
TW TFL 47 1994-1998	Feb 95	11	Jan 96	N/A	No Record
TW FL 16870[12] 1991-1995	No Record	N/A	Jan 96	N/A	No Record
WFP TFL 24	No Record	N/A	Mar 95	N/A	July 95

Source: Ministry of Forests district files.

iii. Conditional approval of plans

Section 41(5) of the Act provides that a district manager may approve a forest development plan subject to a condition. This was a frequent practice in the Queen Charlotte Islands Forest District between June 15, 1995 and February 15, 1996, as it had been prior to Code implementation. If a licensee had failed to comply with requests for further information, the district manager would generally provide a letter approving the plan subject to conditions that had to be fulfilled before harvesting would be approved.

Several such letters during this period did not explicitly state that a plan was approved, with or without conditions. For example, the district manager's letter of February 22,

[8] FYDP - Five-Year Development Plan (Pre-Code)
[9] FDP - Forest Development Plan (Code)
[10] Number of months between submission and approval of new plan.
[11] District files contain no record of a previous five-year development plan.
[12] FL A16870 has no record of ever being approved.

1995 regarding TimberWest's 1994-98 development plan for TFL 47 noted that "we submit the following comments for your direction" and referred to information requirements needed "to facilitate our review of your final development plan," thereby implying that a revised development plan was expected. General comments noting deficiencies in mapping requirements and in information required for conformity with the Coast Planning Guidelines followed. These general comments were followed in turn by specific comments on each block, noting which blocks were approved as submitted and which required further refinement. One licensee commented that these "subject to" conditions were "vague or draft in nature" in many cases.

The district manager told the Board that, as the approval letters showed which cutblocks were subject to conditions, this was sufficient indication that other cutblocks were eligible for cutting permit submission. Nevertheless, given the fact that letters to licensees did not indicate that a plan as a whole was approved, and imposed general requirements for revision in "final development plans," there was considerable room for uncertainty regarding the nature of the approval. In fact, some referral agencies told the Board that the letters left them with the assumption that they would have a later opportunity to review a final development plan before any cutblocks were approved. This was not to be the case. Instead, amendments were later made to forest development plans for each revised cutblock, and each amendment was referred in isolation to agencies for review. The district manager noted that, in his view, even under this arrangement, referral agencies were involved in all cutblock approvals and effectively held the authority to veto any amendment that did not meet their approval.

Finding 4.
The district manager frequently approved forest development plans subject to conditions that had to be fulfilled before proposed harvesting activities would be approved. These included both general conditions that applied to a plan as a whole, and specific conditions for individual cutblocks.

C. Changes to plans and cutblocks

i. Changes in updated forest development plans

The Board conducted a comparison between grandparented plans and subsequently approved forest development plans, to assess the type and amount of change made to the planned cutblocks. As discussed in Appendix 1, in ideal planning circumstances updated forest development plans should refine preceding plans and avoid large changes.

Eight of the 12 grandparented plans described above were replaced by new forest development plans between June 15, 1995 and February 15, 1996. The pre-Code 1994-98 SBFEP forest development plan was never formally approved. However, the plan that

had been in use was compared to the 1993-97 SBFEP forest development plan. Four of these nine plans (SBFEP and MacMillan Bloedel Alliford Bay, McClinton Bay and Ferguson Bay divisions) showed significant changes, including new blocks, in the first year of the approved plan compared to the previously approved plan. Further detail is provided in Appendix 3, Table C.

Finding 5.
The problems in forest development planning were reflected in a wide variation among licensees in the amount of change between grandparented plans and subsequent forest development plans. The SBFEP and three of MacMillan Bloedel's plans had significant changes, including new blocks.

ii. Changes to cutblocks in approved plans

Once a forest development plan is approved, a licensee may apply for cutting permits for one or several cutblocks in the area covered by the plan. During the eight months covered by the special investigation, a total of 94 cutblocks were:

- submitted for cutting permit approval;
- received cutting permit approval;
- submitted for forest development plan amendment; or
- received forest development plan approval.

These 94 cutblocks provided the focus for the Board's examination of compliance with the Code.

Prior to June 15, 1995, the process for applying for cutting permits was contained in licence documents. For example, section 4.07 of MacMillan Bloedel's TFL 39 licence document required the licence holder to show which cutblocks it planned to harvest within the term of the plan. The licence holder also needed to include cutblocks from later years of the plan, which could be applied for if cutblocks scheduled in the first two years were not available.[13] The Code changed this process. Section 19(1) of the Act requires cutblocks named in cutting permit submissions to be identified on an approved forest development plan.

To determine the pattern and frequency of submission and approval of cutblocks that were either not identified in approved forest development plans, or were moved ahead of the planned schedule, the Board analyzed changes in cutblocks between approved plans and cutting permit submissions and approvals. This analysis focused on changes in geographical block position and scheduled year of harvest for each cutblock.

[13] This was part of the pre-code cutting permit application process, rather than a transitional content requirement under the Code.

Geographical block position

Alterations to cutblock boundaries ranged from small changes on the ground that could not be mapped, to relocation of cutblocks completely outside any area contained in the approved plan. The alterations also included changes to the total area of some of the original cutblocks.

The Board analyzed the magnitude and range of changes by identifying four categories of change in block position: no change, minimal change, moderate change or maximum change. These definitions are described in Appendix 3.

While forest development plans are expected to indicate the location of cutblocks, minimal changes to cutblock boundaries (e.g. to protect riparian areas) when cutting permit applications are submitted are not unusual. Moderate and maximum changes may involve significant boundary changes and are most likely to occur where incomplete assessments have been conducted during the preparation of forest development plans. For example, a road location may be changed to avoid sensitive terrain or to reduce costs. A change in road location often results in new timber becoming available for removal from that road location as well as a loss of timber available from the old road location. Timber volume may be added to one portion of a block to make up for timber deletions elsewhere in the block, for example, as a result of low-volume timber types or for larger riparian reserves.

This analysis looked only at the degree of change. The Board made no assessment regarding whether the changes had a positive or negative effect for resource management or conservation. The Board acknowledges the limitations of determining whether or not the identity of a cutblock has been maintained simply by looking at changes in the location of the cutblock. However, given the lack of clarity of section 19(1) and with limited information, it was necessary for the Board to establish a basic standard for comparing the identity of cutblocks approved in forest development plans and subsequently approved in cutting permits. Change in area or location is the most obvious means of establishing this comparison.

The Board's analysis included a review of all cutblocks submitted for cutting permit approval between June 15, 1995 and February 15, 1996. This analysis showed that the following percentages of these cutblocks had been altered to a moderate or maximum degree by each licensee:

• MacMillan Bloedel	46%	(23 of 49 cutblocks)
• TimberWest	37%	(3 of 8 cutblocks)
• SBFEP	34%	(7 of 18 cutblocks)
• Husby Forest Products	0%	(0 of 19 cutblocks)

(See Appendix 3, Table C, for a detailed analysis.)

The district manager and some licensees explained to the Board that cutblock size, shape and position would frequently change during this period as a result of assessments that

had not been completed during the preparation of forest development plans. Changes were also made to address concerns raised by referral agencies during the review of forest development plans. No subsequent evidence was provided to indicate, and the Board had no reason to conclude, that changes occurred for reasons other than those described by the district manager and licensees.

In most cases, according to the district manager, cutblocks would become smaller or be moved slightly, while overlapping the original boundaries, or would be altered to account for harvesting exclusions to avoid visually sensitive areas, sensitive terrain, wildlife habitat, riparian areas and culturally modified trees. In each of these cases, the district manager, in consultation with other agencies, concluded that changes to cutblock boundaries represented an improvement by reducing the potential impacts of harvesting on the environment. While the Board found some cases where cutblock size was reduced as a result of changes, in most instances where there were moderate or maximum changes, cutblocks remained approximately the same size or increased in size.

Finding 6.
The positions and shapes of a substantial number of cutblocks approved in forest development plans for three licensees (MacMillan Bloedel, TimberWest and the SBFEP) were modified to a moderate or maximum degree (as defined in this special investigation) in subsequent cutting permit submissions.

Application of section 19 of Act

Section 19 of the Act, as it read during the period under investigation, provided that:

> "the holder of a major licence ... may only apply for a cutting permit ... if a forest development plan identifies
> (a) the cutblocks to be harvested under the cutting permit..."

If a cutblock was not identified in an approved forest development plan, the plan amendment had to be submitted by the licensee and approved by the district manager before application for a cutting permit was made.[14] Appendix 4 summarizes the Board's interpretation of the section 19 requirement.

It is impossible to precisely define the point at which changes to the boundaries of a cutblock cause the cutblock to no longer be 'identified' on an approved plan. However, the Board concluded that the changes in cutting permit submissions described as "maximum" - based on the Board's special investigation criteria - when compared to the development plan, had the effect of sufficiently changing the identity of cutblocks to result in a breach of section 19.

[14] Section 19, *Forest Practices Code of British Columbia Act.*

As shown in Appendix 3, Table C, 19 of 94 cutblocks showed "maximum" changes to block boundaries. The district manager told the Board that at no time had cutblocks not identified on approved forest development plans ever been granted cutting permit authority, and that physical changes to cutblock boundaries do not mean that a cutblock is new or not identified on a forest development plan. He also indicated that he understood that the section 19 requirement was met if an altered cutblock had the same block number and remained in the same drainage or "location." However, the Board concludes that there was a breach of section 19 by licensees that applied for cutting permits for cutblocks showing maximum changes prior to approval of amendments to those plans.

Section 41(3) of the Act provides that a district manager may only approve an *operational* plan if it is prepared and submitted in accordance with the Act. A cutting permit is not defined as an *operational* plan under the Code. For that reason, a breach of section 19 did not result in a breach of section 41(3).

Finding 7.
Contrary to section 19 of the Act, during the period of the special investigation—June 15, 1995 to February 15, 1996— licensees had applied for cutting permits for 19 cutblocks (2 by TimberWest, 3 by the SBFEP and 14 by MacMillan Bloedel) that were not identified on approved forest development plans.

Scheduled year of harvest

Changes in the proposed year of harvest for cutblocks from an approved forest development plan to the next submitted plan or an amendment are not explicitly constrained by legislation, regulations or standards. The *Forest Development Plan Guidebook* indicates that cutblocks in the first two years of a forest development plan are expected to be "issued" under cutting permit. In the first two years of a plan, the expected result is "all cutblocks under issued cutting permits, all roads developed, and harvesting occurring as scheduled by the forest development plan."[15]

In order to have the first two years of development approved in a cutting permit, it is necessary for a licensee to apply for the permit before the cutblocks are scheduled to be harvested in the forest development plan. In the Queen Charlotte Islands Forest District, as shown in Table 3, significant numbers of cutblocks were submitted for cutting permit approval as much as four years ahead of schedule.

[15] *Forest Development Planning Guidebook*, page 59.

Table 3. Cutblocks approved or submitted for cutting permit approval, June 15, 1995 to February 15, 1996.

Licensee	Total # Submitted	Harvest Year Scheduled in Approved FDP				
		1995	1996	1997	1998	1999
Husby Forest Products	19	13	4	2	0	0
MacMillan Bloedel	49	13	17	8	8	3
SBFEP	18	13	4	1	0	0
TimberWest	8	7	1	0	0	0
TOTAL	94	46	26	11	8	3

While the issuance of a cutting permit does not ensure that harvesting will proceed immediately, a cutting permit provides the licensee with the authority to harvest in a manner consistent with the Code. The Board did not examine actual dates of harvesting. However, past and present district managers indicated to the Board that cutblocks approved ahead of the schedule shown on approved forest development plans (during the special investigation) were also harvested ahead of that schedule.

As discussed earlier in this report, the district manager and some licensees explained to the Board that harvesting schedules were accelerated, between June 15, 1995 and February 15, 1996, during the period under investigation in order to address critical timber supply shortages resulting from factors such as delays in cutblock approvals.

Finding 8.
The majority of cutting permit applications, between June 15, 1995 and February 15, 1996, were for cutblocks scheduled in years 1 and 2 of approved forest development plans. However, cutting permits for 22 of the 94 cutblocks examined were for years 3 to 5, significantly ahead of the harvesting schedule approved in forest development plans. Cutting permits for 19 of these 22 cutblocks were on MacMillan Bloedel's plans, and only MacMillan Bloedel submitted cutting permit applications for cutblocks scheduled in years 4 and 5.

III. Amendments to Forest Development Plans

A. Amendments to conditionally approved plans

Lengthy delays in the submission and approval of forest development plans, together with a shortage of cutblocks approved without conditions, seriously aggravated the shortage of available timber and unemployment in the forest industry in the area. In the spring of 1995, for example, approximately 80 MacMillan Bloedel loggers were out of work as a result of a lack of approved road permits and cutting permits. Similarly, all other major licensees experienced periodic shortages of approved volumes that caused temporary shutdowns.

When cutting permits for previously approved blocks were exhausted, licensees examined blocks with conditional approvals to identify those for which conditions could be met quickly. Refined cutblocks were then submitted to the district manager for cutting permit approval, in some cases at the same time as the applications to amend the forest development plans to approve the refined cutblocks. In most cases, approval to amend the forest development plan was given at the same time as approval for the cutting permit. The district manager reported that meetings were held with all parties to establish a protocol for these procedures. In the following section, "amendments" refers to both cutting permit submissions and amendments to forest development plans.

The Board was unable to determine the precise number of amendments that occurred because the district was unable to provide clear records, and some cutting permit approval letters were not clear about whether an amendment was also being approved. The district manager acknowledged that the filing system was not well organized and has advised the Board that improvements to the record-keeping system have been made since the period covered by the special investigation.

The Act does not stipulate when amendments to forest development plans are required, except by inference in section 19, which requires road locations and cutblocks to be harvested under a cutting permit to also be identified on a forest development plan. Nevertheless, in most instances, after a cutting permit had been submitted for a block that had conditions placed on it, the district manager amended the relevant forest development plan prior to, or concurrent with, the approval of the cutting permit. Before a cutting permit or road permit was approved, district staff would ensure that conditions in the letter approving the forest development plan had been met. If they had been met, the district manager would amend the plan, usually by a statement to that effect in the cover letter approving the cutting permit or road permit. The district manager told the Board that development plan maps were not physically updated, due to the time and expense involved. However, the district manager assured the Board that each amendment was considered and evaluated in relation to the entire plan, and subsequent plan submissions incorporated previously approved cutblock amendments.

According to the district manager, this amendment process became the usual practice between June 15, 1995 and February 15, 1996, both in the district and along the coast generally. The forest development plan amendments were primarily the result of cutblocks in forest development plans being subject to conditions, and the number of such amendments was significant. The district manager emphasized to the Board that the amendment process was not considered a desirable way of doing business, but was necessary under the circumstances.

Finding 9.
Between June 15, 1995 and February 15, 1996, it became common practice for the district manager to approve amendments to conditionally approved forest development plans in the same cover letters that approved cutting permits and road permits. Development plan maps were not physically updated to reflect the changes, and no overall record of the status of all blocks was maintained for each forest development plan.

B. The referral process

Referral of forest development plans and amendments to other government agencies provides an essential opportunity to ensure that non-timber values are not compromised by harvesting and road-building plans, and that Code objectives are met. This enables the district manager to fulfil the responsibility, under section 41(1) of the Act, to ensure that a plan or amendment adequately conserves the forest resources of the area to which it applies.

Section 6(1)[16] of the *Operational Planning Regulation* provided that the district manager may require a person submitting an amendment for approval to refer the amendment to resource agencies or any other person or agency specified by the district manager. A referral made under section 6(1) required the minimum 60-day period for review and comment provided by section 4(1) of the regulation.

As the review and comment provisions of the Code were suspended by section 229 of the Act for the first six months after the Code came into effect, section 6 did not take effect until December 15, 1995. The district manager told the Board that he did not require licensees to make referrals under section 6, even after Code requirements for review and comment came into effect on December 15, 1995. (Eight of the 94 amendments submitted or approved during the period covered by the investigation were submitted or approved after December 15.) However, it was standard practice in the district, both before December 15, 1995, and to the present day, for agreement holders and the SBFEP to refer all forest development plan amendments to the Department of Fisheries and Oceans (DFO), the Ministry of Environment, Lands and Parks (MELP) and the Haida

[16] Later renumbered section 7(1), with some changes.

Nation—although a representative of the Haida Forestry Branch told the Board that it did not always receive letters applying for amendments.

The district manager told the Board that statutory notice, under section 6 of the *Operational Planning Regulation*, was not necessary because the district manager was following procedures that had been in place prior to the Code. Referral agencies were already familiar with these procedures. The district manager also explained that meetings were held with referral agencies to explain the process to be followed. However, the absence of a fixed review period placed unusual pressure on referral agencies at a time when urgency created by timber supply shortages was the order of the day. The urgency and informality of the process resulted in uncertainty among referral agencies about the amount of time available for review. There was also uncertainty about whether licensees would be required to address and inform the district manager of the referral agencies' concerns, which was also required in section 6 of the *Operational Planning Regulation* at the time of this special investigation. According to a representative of the Haida Nation, in one instance only 15 days elapsed between an application for an amendment and its approval.

Finding 10.
Instead of requiring licensees to refer amendments to the Department of Fisheries and Oceans, the Ministry of Environment, Lands and Parks and the Haida Nation under section 6 of the *Operational Planning Regulation*, the district manager authorized the continuation of referral processes that had existed before the Code came into effect. These processes left referral organizations in doubt about the time available for review and whether or not their concerns would be addressed.

Although referral agencies were provided an opportunity to review amendments, the number of amendments submitted during the period covered by the investigation (roughly one every two working days) would have made it virtually impossible for referral agencies to adequately review and comment on each amendment, even under ideal circumstances. Several factors made the difficulty of doing so even greater during this period:

1. **Limited staff** - Referral organizations had few staff available to examine the amendments in addition to their ordinary workload. DFO and MELP were each essentially staffed by one person in the district during the period covered by the investigation. MELP indicated it had staff resources to review one version of a forest development plan but not both the first and final versions of a plan. The district manager told the Board that he had lobbied for an increase in MELP staff. The Haida Forestry Branch indicated that it had staff resources to evaluate the "earliest development planned in Haida areas of interest," but not to review and make informed comment on later changes. Similarly, the Ministry of Forests had limited staff resources to review amendments.

2. **No notice of the extent of change** - Neither the Ministry of Forests nor licensees notified referral organizations of the extent of change included in each amendment. The district manager told the Board, however, that he believed referral agency staff typically have a good sense of cutblock amendments, and that the amendments address assessment results and referral agency input. He also noted that this problem was never raised with him.
3. **Quick action needed** - The need for immediate approval of cutblocks for harvesting meant that licensees and the district were generally anxious for quick approval of cutting and road permit applications. In many cases, early dates for field trips were set up with little opportunity for referral agencies to negotiate dates or adjust their schedules. Referral agencies understood that prompt action was anticipated. Given their already strained resources, this further increased the likelihood of cursory or no review.
4. **Single block amendments** - The standard practice of applying for cutting permits for several cutblocks at a time (with a single amendment covering a group of cutblocks) had been abandoned in the district and throughout the coast. Instead, a separate cutting permit submission was now made for each cutblock. This had the effect of significantly increasing the number of amendments requiring review by referral agencies.
5. **Limited assessment at the landscape level** - The large number and rapid rate of amendments made it difficult for referral organizations to evaluate amendments in a landscape context[17]. The Ministry of Forests maintained no records or maps that provided a view of the overall status of cutblocks and roads within each plan. Instead, district staff spent a considerable amount of time attempting to facilitate agency review by explaining amendments in the context of the entire forest development plan and by sharing maps and assessment results.

The task of reviewing constant amendments also compounded the difficulty of reviewing forest development plans that often changed significantly between initial versions of plans and final plans. According to the forest ecosystem specialist at MELP, initial and final plans were so different in some cases that comments to the first could not be applied to the latter, and two complete reviews were necessary, in effect doubling his workload. The primary reason for the extent of change was the fact that, at the initial plan stage, assessments had not been completed to the satisfaction of the Ministry of Forests and referral agencies.

The local representative of DFO stated that the department did not have the resources to complete its regular workload and deal with the constantly changing forest development plans in the district. In April 1995, DFO's area chief of habitat management expressed concern to the district manager and MacMillan Bloedel about MacMillan Bloedel's practice of planning by amendment rather than submitting forest development plans on schedule, and about a general decline in the quality of information being supplied to

[17] In landscape ecology, a landscape is "a watershed or series of similar interacting watersheds". *Strategic Land Use Planning Source Book*, p. 163.

referral agencies. He gave notice that the DFO would no longer provide comment on "draft reports, incomplete documentation or sloppy work." Shortly afterwards, MacMillan Bloedel wrote to the Ministry of Forests regional manager expressing concern that changing requirements had caused the planning process to bog down, and noted that the time taken by referral agencies for review far exceeded the objective set by the district.

Finding 11.
With little notice of amendments, or time to review them, it was difficult for referral agencies to conduct thorough reviews of amendments to forest development plans. This fact, together with an inadequate record-keeping system, created a potential risk that the district manager might not be able to fulfil his responsibilities under section 41 of the Act to determine whether forest development plans and amendments adequately managed and conserved forest resources.

C. Referrals to the Haida Nation

The complaint to the Board from the Haida Forestry Branch included the assertion that "contraventions of the Code resulted in a failure to provide adequate opportunity for the Council of the Haida Nation, holders of aboriginal title within the relevant areas, to be sufficiently consulted or to have adequate opportunity for appropriate review and comment."

Although the Code does not specifically make reference to consultation with First Nations, adequate consultation with First Nations communities and individuals is essential to achieving the Code's objectives. This is reflected in the Preamble to the Act, which at the time of the investigation described one of the Code's objectives as "balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations."[18] The knowledge that First Nations people have of local ecosystems and cultural resources is important to the understanding needed for the conservation of forest resources.

The Board is aware that First Nations have rights that are recognized and affirmed under Canada's *Constitution Act*.[19] However, the Board does not have jurisdiction to investigate whether constitutional rights are protected. Its jurisdiction is limited to determining whether or not there has been compliance with the Code.

[18] A 1997 amendment to the Act added a reference to economic needs and social values. The objective now reads: "balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations."
[19] Section 35, *Constitution Act*, 1982.

The substantial presence of the Haida Nation in the Queen Charlotte Islands Forest District has long been acknowledged. The Haida Nation was designated as a referral agency before the Code came into effect, and was recognized as such in licence documents. All forest development plans and amendments were referred to two band councils (Old Masset Village Council in the north and Skidegate Village Council in the south) and to the Haida Forestry Branch of the Council of the Haida Nation. Skidegate Village Council authorized the Haida Forestry Branch to act on its behalf in reviewing the plans and amendments. In December 1995 and January 1996, the district included the Council of the Haida Nation in meetings with all licensees and other referral agencies to ensure a common understanding of the planning process. The number of Haida representatives added to the complexity of the referral process and created the potential for confusion.

The opportunity to review and comment on operational plans provides the Haida Nation with a meaningful avenue for ensuring the protection of their interests on forest land. The disruption of orderly forest planning processes in the district clearly had a negative effect on the Haida Nation's ability to comment meaningfully on forest development plans and amendments. The Haida had few staff resources and limited expertise with which to evaluate the variety of assessments required under the Coast Planning Guidelines and later under the Code. The fact that so many forest development plans were submitted with incomplete assessments or assessments that did not meet Ministry of Forests expectations, resulting in conditional approvals, made the job that much more difficult. The subsequent frequency of amendments, referred at an approximate rate of one every two days, compounded the difficulty of reviewing harvesting proposals and ensuring that Haida interests were protected. The Haida expressed particular concern about "new blocks ... not identified on any forest development plan," noting the great difficulty of reviewing new blocks in the short period between submission and approval of cutting permits for these blocks. They also expressed the view that the frequency of amendments had the effect of blending the development planning process with the silviculture prescription and cutting permit processes, thus resulting in no effective opportunity to identify areas where logging might infringe on aboriginal rights.

A representative of the Haida Forestry Branch commented that "the forest development plan process has dramatically inhibited Haida Forestry's ability to effectively address issues and input their concerns into the cutblock review process." Concern was expressed, for example, about the practice of accelerating harvesting schedules when the Haida had not completed their own assessments of cultural values such as the presence of culturally modified trees (CMTs). The district manager, on the other hand, noted that licensees had the responsibility to complete CMT surveys, that most surveys were completed by Haida crews, and that the district was proactive in developing a policy to ensure CMT protection.

Differences of opinion about the utility of the planning process complicated the situation for all involved. Haida representatives expressed the view that Haida concerns about cutblocks were often ignored, that spiritual and cultural considerations other than CMTs were often overlooked, and that the planning process had failed the Haida people. On the

other hand, both the district manager and licensees emphasized that it was important to them to hear and address Haida concerns during forest development planning processes, and that they had made every reasonable effort to do so.

The Haida were unable to place much faith in the roles of MELP and DFO in ensuring the protection of forest values of importance to aboriginal people. Both agencies were faced with extreme staffing limitations and were concerned about the quality and quantity of plans and amendments being referred to them, which severely hampered in their ability to ensure the conservation of ecological values.

Finding 12.
An absence of orderly planning processes, as reflected by frequent and numerous amendments to forest development plans, meant that the Haida Nation often had little notice of amendments and little time to review them. This made it difficult for the Haida Nation to conduct thorough reviews of forest development plans between June 15, 1995 and February 15, 1996. This created a potential risk (as was the case with other referral agencies) that the district manager might not be able to fulfill his responsibilities under section 41 of the Act to determine whether forest development plans and amendments adequately managed and conserved forest resources. It also jeopardized the ability of government to meet the Code objective, described in the Preamble to the Act, of "balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations."

D. Public review and comment

The legislative requirements for public review and comment that existed between June 15, 1995 and February 15, 1996 are described in Appendix 5.

The *Forest Development Plan Guidebook* notes that one of the objectives of a forest development plan is "providing a meaningful, coherent and comprehensive picture of future activities, so that the public can know what is proposed, and can provide meaningful and constructive comment on the proposal." Major changes to the plan without public notice or review and comment would be inconsistent with this objective and would compromise the effectiveness of the initial public review of the forest development plan. It is also a basic principle of administrative fairness that persons directly affected by a decision have an opportunity to have their concerns heard and addressed before the decision is made.

Changes in the location and harvesting schedules of cutblocks can directly affect individual members of the public with an interest in an area of public forest land. For this reason, in the Board's view, it is important to err on the side of caution by ensuring an opportunity for public review and comment.

Members of the public who responded to the Board's advertisement of the special investigation generally did not fully understand the concept of operational planning, although they had been involved in public review of forestry planning initiatives in the past. In general, the few people who took time to avail themselves of the opportunities to be involved indicated that they had long since given up hope that the suggestions and comments they made were considered, and believed that public concerns were often dismissed because of the emphasis on fibre flow. Some of those who responded said that they had discontinued their participation in the review process but expected the Code to ensure protection of environmental values. On the other hand, other members of the public benefited from and expressed support for the amendment process—including members of the International Woodworkers of America and the Truckloggers' Association.

i. Exemptions for minor amendments

Of the 94 amendments considered during the study period, eight were submitted or approved between December 15, 1995 and February 15, 1996, when the public review and comment provisions of the Code applied. None of these eight were advertised or made available for public review and comment. The extent of change effected by these amendments is shown in Table 4.

Table 4. Cutblocks submitted or approved in cutting permits or as amendments to forest development plans, December 16, 1995–February 15, 1996

Modification Class	Licensee	No. of Blocks	Block designation
No change*	Husby	1	CP650 Block 2
	Timber West	2	CP 204 Blocks 115E/2 DM7
Minimal*	SBFEP	1	A55998
Moderate*	Timber West	1	CP 205 Block 14K/1
	MB	1	CP 604 Block Gold1
Maximum*	MB	2	CP 655 Blocks Martin 2 and 4

* See definitions in Appendix 3.

The four blocks with moderate and maximum changes included two cutblocks that were located entirely outside of the area approved in the forest development plan. One of these two was approved for harvesting two years before the date scheduled in the forest development plan without an opportunity for public review and comment.

In certain circumstances, a district manager may approve (or give effect to) an amendment without an opportunity for public review or comment. Under section 43(1)

of the Act, as it read during the period covered by the special investigation, a district manager may do so if he or she determines that the amendment:

> "(a) otherwise meets the requirements of this Act, the regulations and the standards,
>
> (b) will adequately provide for managing and conserving the forest resources of British Columbia for the area to which it applies, and
>
> (c) does not affect the public in a material way."[20]

What does "affect the public in a material way" mean for the purposes of section 43(1)(c)? The public is defined by *Black's Law Dictionary* as the "inhabitants of a country or community, or the community at large." The dictionary definition of "material" is "important" or "essential." Prior to the Code, the *Forest Act* required an opportunity for public review and comment on silviculture prescriptions amended "in a way that materially and adversely affects the public." This language was interpreted during staff training to mean changes that would affect local people or would likely be viewed by local people as affecting them. Examples included changes from partial cutting to clearcutting or from manual to chemical brushing.

Section 43 of the Act allows the district manager to make a determination that an amendment will be exempt from public review and comment. Neither the *Forest Development Plan Guidebook* nor the *Public Consultation Guidebook* provides guidance regarding how such determinations should be made. When asked in 1997 for his documentation of the rationale for his determination that public review and comment was not required for these blocks, the district manager told the Board that these determinations were implied by the approval of the cutblock without notices for public review and comment being advertised. Although he had not documented his rationale, he recollected that in making these determinations, he had considered the following factors:

- shift in block position
- adjacent stands of timber
- visual impacts
- if harvesting had occurred in the area in the past
- if there was a possibility of culturally modified trees
- comments from the referral agencies and Haida Nation
- other resource values
- if there was public concern for harvesting in the area
- how the amendment improved the block

On the basis of these criteria, he determined that the public was not affected in a material way by the amendments and that, accordingly, an opportunity for public review and comment was not needed. He also expressed the opinion that in all cases changes in

[20] Section 43(1)(c) was amended in 1997 to read "does not materially change the objective or results of the plan".

block position represented a planning refinement and improvement. However, he acknowledged to the Board that the two blocks with the largest changes, even though in his opinion the changes were an improvement, probably should have been advertised for public review and comment in order to meet Code requirements.

Although timber shortages were not specifically noted as a factor influencing the determination, the district manager acknowledged the pressure they created to keep approvals moving:

> "Current and past objectives are to balance the full implementation of the Forest Practices Code together with maintaining fibre flow. Pressure was definitely placed on the district to get certain approvals through to avoid crew shutdowns and layoffs during this period."[21]

ii. Alternative avenues for public review and comment

Prior to the Code, the legislated opportunity for public review and comment in the operational planning process was provided for silviculture prescriptions (known at the time as pre-harvest silviculture prescriptions, or PHSPs). Five-year development plans were generally required to be advertised by clauses in licence documents. In addition, development plan guidelines suggested the advisability of doing so. The Code removed the requirement for public review and comment at the silviculture prescription stage. The legislated requirement now occurs when forest development plans are prepared and is not required later when silviculture prescriptions are prepared.[22]

This shift in legislated provisions for public involvement meant that, for several months after the Code came into effect, both pre-Code and Code provisions came into play. Silviculture prescriptions prepared for grandparented five-year development plans were subject to public review and comment, as there had been no legislated requirement for this opportunity during the development of grandparented forest development plans. During the same period, the Code required public review and comment on new forest development plans being prepared to replace the grandparented plans.

The district manager and MacMillan Bloedel suggested to the Board that alternative opportunities for public review and comment were one factor that reduced the need to advertise amendments to five-year development plans for public review and comment.

In many cases, amendments to previous five-year development plans (such as those approved in 1992 or 1993) were submitted for approval after initial 1995 forest development plans, submitted for approval between mid-1994 and March 1995, had been advertised for public review and comment. MacMillan Bloedel made the argument that, as these initial plans included the same revised cutblocks and roads as those shown in the

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[21] District manager submission to Forest Practices Board, 9 September 1997.

[22] Nevertheless, the district manager may require public review and comment for silviculture prescriptions under section 47(1) of the *Operational Planning Regulation*.

amendments, there was little need for public review and comment on the amendments themselves.

In addition, the district manager suggested that advertising silviculture prescriptions for blocks covered by grandparented plans provided an adequate opportunity for public review and comment on the changes. They noted that the prescriptions included the results of assessments required under the Code (including assessments required by conditional approvals of five-year development plans), and that these prescriptions were advertised for all blocks prior to approval of development plan amendments. They also pointed out that no comments were ever received from the public or referral agencies on these silviculture prescriptions.

Although there is some merit to these arguments, the Board concluded that alternative opportunities did not preclude the need to provide an opportunity for public review and comment on amendments to forest development plans. Initial plans may be expected to change considerably before approval—indeed, MELP's forest ecosystem specialist noted that, during the period covered by the investigation, the changes between the initial and final plans were so great that two full reviews were necessary. As the primary reason for these changes was understood to be an inadequacy of information at the initial stage, it would have been unreasonable to expect the public to rely on proposals made at that stage as an indication of final plans. Instead, they should reasonably expect to be able to rely on previously approved plans for a clear indication of timing and location of proposed timber harvesting.

Although silviculture prescriptions provide a precise indication of where harvesting is intended to occur, public notices of an opportunity to comment on silviculture prescriptions generally provide no indication that changes to approved cutblocks are anticipated. It would be unreasonable to assume that interested members of the public should avail themselves of the opportunity—and take the extra time—to review silviculture prescriptions on the assumption that cutblock boundaries will have been significantly altered.

In this case, two cutblocks were located entirely outside the areas shown on the approved forest development plan, and the boundaries of two others were significantly altered. The degree of change in cutblock boundaries was such that the district manager had no way of concluding definitively that there was no material effect on the public, as members of the public had not had an opportunity to make their concerns, if any, known.

In considering the legislative requirement for public review and comment, it is important to note, as well, that section 34 of the Act provides that a person may not amend an operational plan to the detriment of another person who has relied on the plan. There is no way of identifying members of the public who may be affected to their detriment if they are not notified of, and provided with, an opportunity to comment on changes to operational plans.

In the Board's opinion, two of the eight amendments described in Table 4 created maximum changes to approved cutblocks. Although the district manager apparently acted in good faith in concluding that these amendments had no material effect on the public, the Board concluded that these two amendments should have been made available for public review and comment, and should not have been exempted from the statutory requirement for public review and comment.

Finding 13.
Exercising the discretion provided under section 43 of the Act, the district manager decided not to require public review and comment for any of the eight forest development plan amendments approved from December 16, 1995 to February 15, 1996. He did not, at the time, document the reasons for his decisions, which included the level of public concern and whether or not an amendment resulted in improved forest management. In the Board's view, the two amendments that created maximum changes to cutblocks identified in approved forest development plans should have been made available for public review and comment. In addition, even though the district manager's evident intent was to provide for improved forest management, the reasons for the decisions not to provide public review ideally should have been documented.

E. Effects of the amendment process

Between June 15, 1995 and February 15, 1996, the number and frequency of amendments to forest development plans had widespread effects on all parties involved in forestry planning in the district.

Positive effects included the following:

- **Maintaining continuity of timber supply** – The amendments freed up timber for harvesting, thus ensuring that logging operations would continue and jobs would be maintained.
- **Improved forest management** – According to the district manager, the amendments resulted in improved management of forest resources. No subsequent evidence was provided to indicate, and the Board had no reason to conclude, that changes occurred for reasons other than those described by the district manager and licensees.

Negative effects included the following:

- **Increased workload** – Staff of licensees, the Ministry of Forests and referral agencies all had to work harder to deal with the frequent and numerous amendments.

- **Reduced opportunity for review by referral agencies** – The number and frequency of amendments reduced the ability of referral agencies, including the Haida Nation, to conduct thorough reviews and comment effectively on the protection of forest resources.
- **Lack of predictability of logging operations** – The amendments diminished the ability of the logging contractors to plan the movement of their operations and maintain a consistent work schedule for their employees.
- **Public distrust** – The amendments reduced the level of trust among some members of the public in the effectiveness of public review and comment processes.
- **Increased Haida distrust** – The amendments reduced the ability of the Haida Nation to organize, schedule and prioritize Haida Forestry's efforts to protect aboriginal interests. They also increased the Haida Nation's lack of trust in the ability of forest development planning, and the willingness of the Ministry of Forests, to address and protect Haida interests in their traditional territories.

Finding 14.
Continuous forest development plan amendments between June 15, 1995 and February 15, 1996 significantly increased administrative workloads, reduced the effectiveness of referral agencies, diminished the ability of logging contractors to plan efficiently, reduced public confidence in meaningful opportunities for public review and comment, and reduced the Haida Nation's trust in the ability of forestry planning to protect their interests. However, the amendments also resulted in freeing up timber for harvesting, securing the viability of logging operations and maintaining employment.

IV. Conclusions

Up-to-date forest development plans are essential to effective forestry planning and operations. They describe where and when timber will be harvested over a five-year period and how forest resources will be conserved and managed. As such, they are critical to ensuring Code objectives are met.

Prior to and during the eight-month period covered by the special investigation—June 15, 1995 to February 15, 1996—there were serious problems in forestry planning in the Queen Charlotte Islands Forest District. These included significant delays in the preparation and approval of forest development plans, resulting in frequent and numerous amendments to approved plans to ensure continued availability of timber supply.

Factors contributing to these problems included the following:

- the challenge of implementing the 1992 Coast Planning Guidelines
- implementation of Code requirements regarding cutblock size and configuration, leave areas and harvesting schedules
- uncertainty among industry and government staff about what was required to properly carry out assessment requirements in the guidelines and Code
- a shortage of approved cutting permits, leading to logging shutdowns and unemployment
- a shortage of staff and specialists in government agencies, licensees and the Haida Nation
- deferral of large areas from timber harvesting
- a large number of parties and licences in the approval process

Some licensees were better able than others to meet the requirements of the Code when it was implemented. During the period of the special investigation, the Board found that MacMillan-Bloedel and, to a lesser extent, the Small Business Forest Enterprise Program (SBFEP) had the most serious problems and were less able to meet the requirements. It is not clear why some licensees were less able than others to complete adequate assessments and prepare forest development plans on schedule, thus avoiding the need for amendments to approved forest development plans. Nor is it clear how much the situation has improved since the time period covered by the special investigation (June 15, 1995 to February 15, 1996).

With regard to the special investigation, the Board concludes that:

- Three licensees (MacMillan Bloedel, TimberWest and the SBFEP) were not in compliance with section 19 of the Act by applying for cutting permits for cutblocks that were not identified on an approved forest development plan.
- The district manager who held the position between December 15, 1995, and February 15, 1996, exercised the discretion given to him under section 43 of the Act to decide that all amendments to forest development plans during that period were minor. However, in the Board's view, two of the eight amendments resulted in maximum changes to cutblocks and were not minor in nature, and therefore should have been made available for public review and comment.
- The district manager should have documented the reasons for his decisions concluding that the amendments were minor and that public review and comment was therefore not required.
- The breakdown in orderly planning processes, together with frequent and numerous amendments to forest development plans, made it difficult for referral organizations to provide informed comment on forest development plans.

With regard to the original complaint from the Haida Forestry Branch, which led to the special investigation, the Board concludes that planning disruptions, especially as reflected in the number and frequency of amendments to forest development plans, made it difficult for the Haida Nation to ensure that their interests were adequately protected during forest development planning.

Although in many cases the planning events that occurred during the period of the special investigation were not consistent with the processes prescribed by the Code, the Board noted that the district manager and licensees were faced with extraordinary circumstances that called for unusual measures. The frequent and numerous amendments were the result of inadequate initial planning. While the amendment process was not desirable, it probably produced better overall results than would have occurred by adhering to the original plans. All parties worked hard to undertake the difficult task of balancing the need to ensure continuity of timber supplies and community employment against the requirements of the Code for conservation of forest resources, during a difficult transition period with staff shortages. Planning delays, accelerated harvesting schedules, and frequent amendments to forest development plans were undesirable. However, in many respects they were the only course available in these circumstances to achieve this balance.

Although the frequency and number of amendments had several negative effects, the Board concludes that the district manager made the best of a bad situation in his attempt to ensure the intentions of the Code were met while seeking practical solutions to a difficult economic situation. It was a learning experience for all parties, the main lesson being the importance of anticipating regulatory changes and being prepared to conduct planning in a thorough and careful manner from the outset—a task that some licensees were better able than others to accomplish.

V. Recommendations

The Forest Practices Code sets out a hierarchy of planning which is the foundation for defining acceptable forest practices in an area, and for approval of these activities by the statutory decision-makers. Within this hierarchy, forest development plans focus planning at the landscape (watershed) level and are the crucial link between strategic plans and site-specific operational plans. In the Board's view, appropriate attention to forest development plans is a fundamental requirement for effective implementation of the Code. These specific recommendations are intended to improve the implementation of forest development planning based on the findings of this special investigation.

The district has informed the Board that current forest development plan and cutting permit application and approval procedures have been rationalized, with reductions in the number of forest development plan amendments and greater efficiency for all parties, and that the district's filing system has been improved. The Board encourages the district to continue to improve its procedures, particularly through implementation of the recommendations of the May 1995 Administrative Review completed by the Vancouver Forest Region. The following recommendations are made to assist the district in this direction. These recommendations relate to legislative requirements currently in effect.

A. Forest development plans

To fulfill the functions defined for a forest development plan under the Act, it must be possible to quickly ascertain which portions are approved, and any conditions of approval. This special investigation revealed that the approval information for individual roads and blocks was scattered throughout the files in the district office, making it impossible to promptly define the status of each cutblock and road in the plans.

Recommendation 1
In the Board's view, a forest development plan is a consolidated document and set of maps that should show the current status of each cutblock and road at all times. The Queen Charlotte Islands Forest District should implement internal procedures to maintain up-to-date plans within its office that are available to other agencies and the public.

B. Amendments to forest development plans

The Code provides for amendments to forest development plans, which, in the Board's view, are required and appropriate when needed to refine plans or in response to emergencies. The Board does not expect that every minor change in harvesting plans would require a forest development plan amendment or that amendments are intended to be the day-to-day approach to forest development planning. In the Board's view, continuous amendment of forest development plans, especially over a number of years, results from a number of possible causes, including a lack of clear direction from government agencies, unstable and likely poor quality planning by agreement holders, or a lack of strong enforcement of Code requirements. A statutory decision-maker faced with planning gridlock and an idle logging workforce must make difficult decisions to ensure availability of timber supplies.

This special investigation revealed that forest development plan amendments were regularly included with cutting permit submissions made by MacMillan Bloedel and, to a lesser extent, the SBFEP, which, in the Board's view, was not intended by the Code.

Recommendation 2

Amendments to forest development plans should only be submitted by agreement holders, and approved by statutory decision-makers, in circumstances that cannot be foreseen. Government should develop and implement policies which:

- encourage thorough and feasible planning by agreement holders before forest development plans are submitted for approval to minimize the need for amendments; and
- provide guidance to statutory decision makers regarding appropriate conditions for amendments.

Government should examine options for streamlining the amendment process without compromising:

- the conservation of forest resources; or
- opportunities for public review and comment where an amendment materially changes the objectives or results of an operational plan.

The district has informally required agreement holders to refer forest development plans and amendments to the Ministry of Environment, Lands and Parks, the Department of Fisheries and Oceans and the Haida Nation, without formally providing notice of this requirement under section 6 (section 7 after June 15, 1998) of the *Operational Planning Regulation*. This practice creates considerable uncertainty about the purpose of the referral and the responsibilities of the agreement holder to consider referral comments. Also, all amendments must currently be referred to these organizations, which is a burden for all parties.

The regulation makes it the responsibility of the district manager to decide whether a referral is needed, in the Board's view, to avoid unnecessary referral of all plans and amendments.

Recommendation 3

The process by which amendments to forest development plans are reviewed and approved should be agreed upon by the district manager, licensees and referral agencies. The district manager should consult with the referral organizations to identify situations where referrals of forest development plan amendments are not necessary. The district manager has suggested that referral organizations should identify the types of amendments they want to review and the information they need to review them, and that licensees should provide this information directly to the referral organizations. The Board supports this approach. The district manager should then make a notice under section 7(1)(a) of the *Operational Planning Regulation* defining when referrals are required, thus clarifying the time-frame and responsibility of the agreement holder in considering referral input.

The interpretation of whether an amendment "affects the public in a material way," and thus should require public review and comment under section 43 of the Act, is an important responsibility district managers have. These determinations have the potential to unduly limit public involvement and information about plans for forest management activities in the province.

Section 43(1)(c) of the Act was amended in 1998 to replace "affects the public in a material way" with "does not materially change the objectives or results of the plan." However, the new section 7(1)(c) of the *Operational Planning Regulation* provides that a district manager may require a person submitting an operational plan or amendment for approval to refer it to "any person that may be materially affected by the operational plan or amendment..." Because of the significant impacts operational plans and amendments may have on members of the public, it is imperative that district managers receive clear guidance regarding the exercise of their discretion in determining whether persons may be materially affected for the purposes of section 7(1)(c) of the regulation, and whether there should be an exemption under section 43(1) from the requirement for public review and comment.

Recommendation 4

The government should provide clear policy direction regarding factors to be considered by district managers in determining:

- whether or not, under section 43(1) of the *Forest Practices Code of British Columbia Act*, an amendment to an operational plan materially changes the objectives or results of the plan; and
- whether or not, under section 7(1)(c) of the *Operational Planning Regulation*, an operational plan or plan amendment may materially affect a person and should be referred for review and comment to a person so affected.

This policy direction should be provided in a manner that ensures that the discretion of the decision-maker is not fettered.

As section 43(1) is an exception to be used only for minor amendments, it is important that district managers provide reasons for decisions to exempt operational plan amendments from public review and comment.

Recommendation 5

District managers should provide written reasons for:

- a decision under section 43(1) of the Act to exempt an operational plan amendment from public review and comment; and
- a decision under section 7(1)(c) of the *Operational Planning Regulation* that a person is or is not materially affected by a proposed operational plan and amendment.

The Board recognizes the workload that detailed documentation of these decisions could create, and for that reason considers brief file notations to be acceptable documentation.

C. Consultation with the Haida Nation

The Preamble to the *Forest Practices Code of British Columbia Act* describes the objective of balancing forest values to meet the economic, social and cultural needs of peoples and communities, including First Nations. Adequate consultation with First Nation communities during operational planning processes is necessary in order for this objective to be achieved. It is therefore important for district staff and licensees to have a clear understanding of the nature and extent of the opportunity for review and comment by First Nations required to ensure that:

- First Nation communities and individuals have an adequate opportunity to comment on operational plans and amendments; and
- concerns expressed by First Nation communities and individuals are addressed in an appropriate manner.

Recommendation 6

When orderly planning processes are disrupted by extenuating circumstances, government should provide clear guidance to district managers on how to ensure that First Nations have an adequate opportunity for review and comment, or referral where appropriate, for Code purposes. First Nations should assist this process by clarifying their needs with district managers.

D. Cutting permit submission and approval

Clarity is needed about which cutblocks in forest development plans can proceed to cutting permit submission. According to the district manager, the district has effectively done this through district manager direction in a letter dated March 20, 1998. Section 20 of the revised *Operational Planning Regulation* creates Category A cutblocks that are approved for harvesting and can proceed to cutting permit submission. However, section

19 of the Act has not yet been amended to restrict applications for cutting permits to approved Category A cutblocks.

Recommendation 7
Section 19 of the Act provides that the holder of a major licence may only apply for a cutting permit "if a forest development plan identifies the cutblocks to be harvested under the cutting permit or licence." Government should amend section 19 to provide that a person may not apply for a cutting permit unless a cutblock is an approved Category A cutblock. Government should also clarify the consequences to a licensee for submitting cutting permits that do not comply with section 19.

E. Status of operational planning in the Queen Charlotte Islands Forest District

The Board did not examine the state of forest development planning in the Queen Charlotte Islands Forest District after February 15, 1996, as this was outside the scope of the special investigation. However, in the opinion of the Board there is a need for public clarification of the current state of planning.

Recommendation 8
The Ministry of Forests and Ministry of Environment, Lands and Parks should publicly clarify the current state of forest development planning in the district by providing the following information:

- The number of cubic metres of timber and the number of months or years of allowable annual cut authorized for harvesting under cutting permits for each licensee and the SBFEP,
- The degree of conformity by licensees with the Code requirement for annual submissions of forest development plans, and
- The current extent of amendments to forest development plans, including their number and reasons for their occurrence, during the six months prior to the release of this report. This information should be provided for each licensee and the SBFEP.

VI. Appendices

Appendix 1. — Overview of Forestry Planning Processes

A. Types of forest tenures

Major forestry operations on Crown land in the Queen Charlotte Islands Forest District primarily occur under three types of licence arrangements provided for in the *Forest Act*:

1. Tree farm licences—area-based licences managed by companies for renewable 25-year periods. During the period covered by the investigation (June 15, 1995–February 15, 1996), three companies held tree farm licences that fell either entirely or in part within the district boundaries. These were MacMillan Bloedel (TFL 39), Western Forest Products (TFL 24), and TimberWest (TFL 47).
2. Forest licences—volume-based licences to harvest timber in a timber supply area, typically for a 15-year term. These were held by two companies: Husby Forest Products and TimberWest.
3. Timber sale licences—rights to harvest timber from a specified area within a TSA, typically held by smaller operations and allocated by the Ministry of Forests under the Small Business Forest Enterprise Program (SBFEP).

B. Forestry planning sequences

Under the Code, operational plans detail licensees' plans for timber harvesting and management of forest resources. From the most general to the most specific, operational plans include forest development plans, range use plans, silviculture prescriptions and logging plans (discontinued for major licensees in 1997 under amendments to the *Forest Practices Code of British Columbia Act*).

Forest development plans (known as five-year development plans before the Code came into effect) show the location of roads and cutblocks in a licence area over an extended (minimum five-year) period.[23] Silviculture prescriptions (known as pre-harvest silviculture prescriptions before the Code came into effect) describe, among other things, the silviculture system to be used, harvesting methods, silviculture treatments to produce a free-growing stand, and limits to soil disturbance (section 12 of the *Forest Practices Code of British Columbia Act*).[24] Logging plans describe how harvesting and post-harvesting rehabilitation will be carried out for the area of an individual cutblock (section 11 of the Act). Silviculture prescriptions and logging plans must be consistent with any approved forest development plan and therefore with any higher level plan in effect.

[23] The district manager may reduce the length of this period in certain circumstances under section 3(3) of the new *Operational Planning Regulation*.

[24] Content requirements for silviculture prescriptions were changed on June 15, 1998, under the new *Operational Planning Regulation* and as a result of amendments to the Act.

Before a road can be built to provide access to a cutblock, a road permit must be approved. The road must be consistent with an approved forest development plan. A cutting permit provides authority to harvest and sets stumpage rates for one or more cutblocks in a selected area such as a drainage within the licence area. Approval of a cutting permit, silviculture prescription and (until June 15, 1998) a logging plan are required before harvesting can begin.

The planning sequence described above was not materially changed by the Forest Practices Code. The Code solidified, refined, and standardized the policies and procedures for operational planning that were in place immediately prior to June 15, 1995 and made them law.

C. Legislative requirements for preparation of forest development plans

i. Before June 15, 1995

Before the *Forest Practices Code of British Columbia Act* came into force on June 15, 1995, there were no legislated requirements for the preparation of five-year development plans. Instead, requirements for five-year development plans were included in licence agreements between tenure holders and the Ministry of Forests.

ii. June 15 - Dec 15, 1995

Section 224 of the Act provided that approved five-year development plans prepared by holders of agreements under the *Forest Act* were deemed to be forest development plans (or "grandparented") until new forest development plans were prepared in accordance with the *Forest Practices Code of British Columbia Act*.

The Act also provided for a six-month transition period from June 15, 1995 to December 15, 1995, during which certain requirements of the Act and regulations were suspended. Section 229[25] of the Act provided that a forest development plan or amendment prepared or approved by a district manager on or before December 15, 1995, need not comply with the content or review and comment requirements of the Act and regulations. Instead, the Act required agreement holders to meet the requirements for five-year development plans in tenure agreements in place immediately before June 15, 1995. In most cases, the licence agreement required the licensee to follow a management plan, and requirements regarding five-year development plan submissions were contained in both the management and working plan and the licence document. Section 229 required the government to follow its own policies and guidelines with regard to the SBFEP during the transition period.

[25] Later renumbered section 230.

iii. After December 15, 1995

After December 15, 1995, both the government and licensees were required to fully meet public review and comment requirements and substantially meet all other requirements for forest development planning contained in the Act and regulations. Substantial compliance was interpreted by the district manager to mean "compliance with the requirements of the Code Act and regulations, except for minor omissions or defects that will not affect the intent of the legislation."[26] (The Forest Appeals Commission has found this definition to be accurate.[27]) Full compliance with the Code was required after June 15, 1997.

D. The purpose and content of forest development plans

Holders of tree farm licences and forest licences are responsible for preparing forest development plans for their areas of operation. The Ministry of Forests is responsible for preparing forest development plans for areas to be harvested in timber supply areas under the SBFEP.

Section 10 of the *Forest Practices Code of British Columbia Act* provides that a forest development plan must:

- cover a period of at least five years unless otherwise prescribed
- describe the size, shape and location of cutblocks and timing of proposed harvesting
- describe the approximate location of existing and proposed access roads, and timing of construction
- specify silvicultural systems and harvesting methods to be used
- specify measures for the protection of forest resources (defined as including, without limitation, values such as biological diversity, water, wildlife, fisheries and recreation)
- be consistent with any higher level plan

The *Forest Development Plan Guidebook*, published in December 1995, describes procedures, practices and results in development planning that are consistent with the legislated requirements of the Code. The introduction of the guidebook notes that a forest development plan must be more than "a document that describes and illustrates how harvesting and road development...will be managed...."

The Forest Appeals Commission, in Appeal No. 96/04(b) found that the purposes of a forest development plan are threefold:

> "it is to specify measures that will be carried out to protect forest resources; provide the public and resource agencies with a right to review and comment;

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[26] Letter from district manager to all major licensees, February 1, 1996.
[27] Appeal No. 96/04(b).

and to guide in the preparation and approval of lower level plans (e.g., silviculture prescriptions, logging plans, cutting permits and road permits)."[28]

The Commission concluded that:

> "As the highest level of operational plan, it is implicit that a forest development plan should contain sufficient information about the "area under the plan" from which lower level planning regarding cutblocks can be developed. From the plan, one should also be able to assess where various resources are located in the larger area, to ensure that the proposed harvesting and road construction locations are appropriate, having regard to protecting those forest resources. As stated by the Appellant, it should be a plan for the development of the forest, "a forest development plan"; not a lower level operational plan for an individual cutblock, although some of that information will of necessity be contained in the larger plan."

Appendix 4 to the *Forest Development Plan Guidebook* describes the ideal progression of cutblocks through the five-year planning process as follows:

- Years 5 and 4 show the size and shape of cutblocks and describe preliminary road access. Plans are referred to BC Environment, stakeholders and the public so that concerns can be identified and addressed and cutblocks can be modified or replaced as necessary. Fieldwork for the silviculture prescription is completed, and necessary assessments (e.g., terrain and archaeological) are conducted, with the results included in updated plans.
- In year 3, the boundaries and layout of blocks are shown, with minor modification to reflect on-site conditions but no major changes to block design or harvesting prescription. By now, silviculture prescriptions and logging plans have been prepared, together with the cutting permit application.
- By years 2 and 1, cutting permits have been issued for all cutblocks, roads are developed, and harvesting begins according to the forest development plan schedule.

Although planning should follow this progression under normal circumstances, variations may occur where factors such as market conditions and constraints on available timber supplies dictate the need for alternative harvest proposals. One way to maintain fibre flow is by altering harvesting schedules. In some instances as well, cutblock proposals shown in an earlier stage of forest development planning may be entirely deleted from subsequent plans, or, on occasion, previously unidentified cutblocks may appear in year 1 of a forest development plan. Such variations compromise the objectives of effective forest development planning and should be the clear exception rather than common practice. Forest development planning conducted in an orderly and gradual manner provides a prolonged opportunity to refine cutblocks, thus helping to ensure that appropriate forest practices will be carried out and that impacts of road-building and harvesting on non-timber values can be adequately assessed and minimized.

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[28] Appeal No. 96/04(b), p. 9.

Although the *Forest Development Plan Guidebook* was not available to district staff and licensees until January 1996, the planning progressions it recommended had essentially been the same for many years prior to the development of the Code.

E. Annual submissions of forest development plans

Even though they cover a five-year period, forest development plans must be submitted and approved annually unless the district manager authorizes a longer period (to a maximum of two years). Without such an authorization, a forest development plan prepared by a holder of a major licence expires one year after the plan is approved. This only applies for continuous harvesting operations. In the case of a licensee that ceases operations for an extended period, there may be a consequent gap of several years between forest development plans.

The *Forest Development Plan Guidebook* notes that the objective of annual updating "is to provide a minimum of two years of approved operations (years 1 and 2) and notice of intended operations for years 3, 4, and 5." [29] This ensures an orderly progression of cutblocks from their first mention in a forest development plan, through five successive years of plan approvals to final cutting permit approval. The updated forest development plan should contain refinements to cutblocks included in the previous year's plan and should show intended new development in the last year of the plan. For example, a cutblock mentioned for the first time in year 1999 of a 1995-99 forest development plan would be described in increasing detail in the 1996-2000, 1997-2001 and 1998-2002 plans before receiving a cutting permit for the first two years of the 1999-2003 plan.[30]

Prior to the Code, the requirement for annual updating of five-year development plans was contained in licence agreements rather than in law.

F. Amendments to forest development plans

Under section 34 of the Act, a person who holds a forest development plan may, at any time, submit an amendment to the plan to the district manager for approval, provided that the amendment does not act to the detriment of another person who has relied on the plan.

The Act does not describe the circumstances in which an amendment is required. However, section 19(1) provides that the holder of a major licence may only apply for a cutting permit if a forest development plan identifies cutblocks to be harvested and the location of access roads. Thus, applications for cutting permits describing cutblocks or roads not identified on a forest development plan must be preceded by approval of an amendment to identify them on the forest development plan. An orderly planning process, with annual updates to dependable forest development plans, guards against the need for amendments. New cutblocks and roads are identified in the later years of each new plan, with several years of refinement before cutting permits are approved.

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[29] Forest Development Plan Guidebook, p. 1.

[30] The *Operational Planning Regulation* no longer requires that the anticipated year of harvest be stated except where the timing is critical to the management of a non-timber resource.

G. Review and comment by the public and referral agencies

The opportunity for review and comment on forest development plans by government agencies and the general public is an essential step in the planning process. It enables referral agencies and the general public to be informed of development that may take place in the future and to identify resource values and options for protecting these values.

Draft forest development plans, as well as amendments to approved forest development plans, are referred to the Ministry of Environment, Lands and Parks, whose mandate includes ensuring that adequate provision is made for habitat protection, maintenance of water and air quality, and other factors necessary to achieve environmental sustainability. They are also referred to the Department of Fisheries and Oceans, which ensures protection of habitat of anadromous fishes such as salmon. In addition, in the Queen Charlotte Islands Forest District, plans and amendments are referred to the Haida Nation.

Before the Code came into effect, there were only two legislated requirements for public review and comment and interagency referral regarding non-timber values in operational planning. One was section 4(c) of the *Ministry of Forests Act*, which provides that one of the functions of the ministry was to integrate the production of timber with "the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values...in consultation and cooperation with other ministries and agencies of the government and with the private sector."

In addition, the *Silviculture Practices Regulation* (and the *Silviculture Regulation* before 1994) required licensees to advertise pre-harvest silviculture prescriptions (PHSPs) for public review and comment. Although there was no legislated requirement for public review and comment on management plans and five-year development plans, the requirement was written into some licences. Silviculture prescriptions for blocks identified on approved grandparented plans were required to be made available for public review and comment after the Code came into effect.

The Forest Practices Code, through section 4(1)[31] of the *Operational Planning Regulation*, requires a minimum 60-day period for public review and comment on forest development plans and amendments. This replaces the pre-Code requirement for advertisement of silviculture prescriptions. The Forest Appeals Commission recently found that the review and comments provision in the Act and *Operational Planning Regulation* constituted a shift towards more input at the planning stage.[32]

Under the Code, it is the licensee's responsibility to respond to concerns raised by referral agencies and the public and to indicate to the district manager how each of those concerns has been addressed in the revised plan or amendment.[33] Final forest development plans are again forwarded for comment to referral agencies before they are approved.

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[31] Later renumbered section 27(4).
[32] Appeal No. 96/04(b), p. 29.
[33] Sections 4(5) and 5 (later renumbered section 30) , *Operational Planning Regulation*.

Appendix 2. — Changes between Grandparented Plans and Subsequent Forest Development Plans

In order to assess the state of planning in the Queen Charlotte Islands Forest District during the period covered by the special investigation (June 15, 1995 to February 15, 1996), the Board commissioned the Sterling Wood Group to identify and analyze changes between grandparented plans and forest development plans approved during the study period. These were documented in the October 28, 1996 report to the Board, *Comparison of Current Development Plans with Previous Development Plans in the Queen Charlotte Islands Forest District.*

Table A, drawn from the information provided in the Sterling Wood report, describes the terms and approval dates of the major tenure five-year development plans grandparented as forest development plans when the Code came into effect on June 15, 1995. The table also provides information about three licences that were not included in the Sterling Wood report because no forest development plans were approved during the study period. These are TimberWest's TFL 47 and FL A16870, and MacMillan Bloedel's Dinan division.

Table A. Major tenures and forest development plans, Queen Charlotte Islands Forest District

Licensee	*Licence*	*Allowable annual Cut (m^3)*	*Division*	*Term of Grandparented Plan*	*Last 5-year plan approved before June 15, 1995*	*FDP approved June 15, 1995 - Feb. 15, 1996*
Husby Forest Products	FL A16869 FL A16871 FL A16872	333 950		1994-98 1993-97 1994-98	15 Feb. 1995 1993 (not verifiable)* 6 Apr. 1995	November 1995 January 1996 November 1995
Ministry of Forests	SBFEP	143 866		1993-97	Not verifiable	None
MacMillan Bloedel	TFL 39 (QCI)	1 127 876	Alliford Dinan Ferguson McClinton Skidegate	1991-95 1994-99 1994-99 1992-96 1994-98	1992 (not verifiable) 27 Oct. 1994 9 Feb. 1995 1992 (not verifiable) 1994 (not verifiable)	October 1995 None September 1995 September 1995 September 1995
Western Forest Products	TFL 24	115 000		1993-97	1993 (not verifiable)	July 1995
TimberWest	TFL 47 FL A16870	157 000 23 048		1994-98 1992-96	22 Feb. 1995 7 Dec. 1992	None None

* Dates indicated as "not verifiable" could not be confirmed by the district office.

Table A indicates that five of 12 plans grandparented under the Code had not been updated since 1992 or 1993. Each agreement holder was required under the terms of its licence to update plans annually, except MacMillan Bloedel, which had made an arrangement with the Ministry of Forests for biennial updating. Two of five MacMillan Bloedel plans had not been updated for three years before the Code came into effect. The district office was unable to provide records of updating the SBFEP's forest development

plan. However, the fact that the 1993-1997 plan was grandparented and no new plan was approved between June 15, 1995 and February 15, 1996 indicates there were delays in updating the plan.

The Sterling Wood report identified cutblocks in the major tenure forest development plans approved after June 15, 1995, that were either not identified in the grandparented plans, or were moved ahead of the schedule described in the grandparented plans. Table B summarizes the report's analysis of cutblock changes between the grandparented plans and the first forest development plans approved under the Code.

Table B. Comparison of Grandparented Five-year Development Plans and Subsequent Forest Development Plans

Licensee/Licence	*Plan alterations*
Husby Forest Products	
FL A16869 FL A16872	There was consistency between the grandparented plan and the approved plan. Changes to cutblocks occurred only in years 3 to 5 of the approved plan.
FL A16871	This licence is a special case, in that the entire volume for the five-year cut control can be extracted in two years. The five-year development plan to do this extraction was submitted in 1994. As expected, there were major changes between the grandparented plan and the approved forest development plan.
MacMillan Bloedel (TFL 39)	
Alliford Bay McClinton Bay	The approved plans consisted almost entirely of new development. Few cutblocks remained from the grandparented plans to compare with the new development.
Ferguson Bay	One-third of the cutblocks in year 1 of the approved plan were new, and the rest of the plan was essentially the same as the grandparented plan.
Skidegate	This plan was consistent with the grandparented plan.
Western Forest Products (TFL 24)	
Sewell Inlet	The approved plan was consistent with the grandparented plan. Cutblock changes occurred only in the later years of the plan.
Small Business Forest Enterprise Program	
	This plan was put into effect before June 15, 1995, and therefore was the grandparented plan. It was compared to the previous plan to look at the trend. Large changes occur in years 1 to 3 of the plan, with less change occurring in years 4 and 5, contrary to the recommendations of the *Forest Development Plan Guidebook*. The district manager explained to the Board that scheduling and block position changes were primarily the result of short notice salvage operations, road right-of-way changes and planning changes.

Note: TimberWest is not included in Table B, as this licensee did not have a plan approved during the time period of the investigation. MacMillan Bloedel's Dinan plan is not included for the same reason.

Appendix 3. — Changes to Cutblocks Submitted for Cutting Permit Approval

For the purposes of Table C below, the Board developed the following definitions to describe changes to cutblocks submitted for cutting permit approval:

No change – No change between approved plan and cutting permit.

Minimal change – A change that is clearly minor in nature.

Moderate change – A change that did not clearly result from a planning refinement, based on information available to the Board.

Maximum change – A large change in block position, size or shape, or introduction of a new block.[34]. In addition, the person required to publish a notice under section 2 must review any comments received and make any revisions to the amendment that the person considers appropriate (section 4(4)[35]).

Table C. Changes in configuration, geographical position and area of cutblocks submitted for cutting permit approval between June 15, 1995 and February 15, 1996.

Licensee	Total	No change		Minimal		Moderate		Maximum	
	#	#	%	#	%	#	%	#	%
TimberWest	8	2	25	3	38	1	12	2	25
Husby	19	11	58	8	42	0	0	0	0
MacMillan Bloedel	49	12	22	14	29	9	18	14	28
SBFEP	18	1	5	10	45	4	18	3	16
Total	94	26	25	35	36	14	14	19	20

Note: Western Forest Products is not included in Table C as it submitted no cutting permit applications during the period under investigation.

[34] The terms *minimal*, *moderate* and *maximum* were selected by the Board as an investigative tool to clarify the extent of change and are not Code or planning terminology.
[35] Renumbered section 29(1) after 1998 revisions.

Appendix 4. — Interpreting Section 19 of the Act

Section 19 of the Act, as it read during the period under investigation, provided that:

> "the holder of a major licence ... may only apply for a cutting permit ... if a forest development plan identifies:
>
> (a) the cutblocks to be harvested under the cutting permit..."

Section 10 of the Act provides that a forest development plan must include maps and schedules describing "the size, shape and location of cutblocks proposed for harvesting ... and the approximate location of existing and proposed roads that will provide access to the cutblocks." Logically, section 19 relates back to section 10. In the Board's view, therefore, a block is "identified" on a forest development plan when its size, shape and location have been included in maps and schedules. Also, given that section 10 requires the "approximate" location of roads to be described, the location of cutblocks must be described fairly precisely.

The dictionary definition (Gage) of "identify" is "to show to be a certain thing; prove to be the same". While it could be argued that the boundaries of a cutblock applied for in a cutting permit must be identical to those on an approved forest development plan to satisfy the section 19 requirement, the Board viewed such an interpretation to be too narrow, given that slight revisions are to be expected in the normal course of planning. At the other extreme, revised cutblocks that fall entirely outside the boundaries shown on an approved plan cannot be said to be identified on the plan.

It is impossible to precisely define the point at which changes to the boundaries of a cutblock mean that it is no longer identified on an approved forest development plan. For the purposes of this report, however, the Board concluded that changes defined as "maximum" in this report change the identity of a cutblock. "Maximum" is defined in this report to mean "a large change in block position, size or shape, or introduction of a new block."

Appendix 5. — Legislative Requirements for Public Review and Comment

The following requirements for public review and comment were in effect during the period covered by the special investigation:

June 15, 1995 – December 15, 1995

During the first six months after the *Operational Planning Regulation* came into force, during which time its review and comment requirements were suspended by section 229 of the Act, agreement holders were expected to meet the requirements for public review and comment included in licences in effect before June 15, 1995.

Licence documents and associated management plans contained various requirements for licensees to invite public review and comment on forest development plans.The Small Business Forest Enterprise Program was required to follow Ministry of Forests' guidelines for forest development plans. However, with the exception of one licence (Husby), none of these documents required an opportunity for public review of plan amendments.

December 16, 1995 – February 15, 1996

After December 15, 1995, licensees and the Small Business Forest Enterprise Program were required to follow Code requirements for public review and comment on amendments to forest development plans.

Under the *Operational Planning Regulation* a person who submits an amendment or a district manager who puts an amendment into effect must advertise it in the *B.C. Gazette* and a newspaper (section 2(1)[36]) and provide adequate opportunity for review and comment for at least 60 days to persons interested in or affected by operations under the amendment (section 4(1)[37]). In addition, the person required to publish a notice under section 2 must review any comments received and make any revisions to the amendment that the person considers appropriate (section 4(4)[38]).

[36] Renumbered section 25 after 1998 revisions.
[37] Renumbered section 27(1) and (4) after 1998 revisions.
[38] Renumbered section 29(1) after 1998 revisions.